

ACQUISITION ALERT 01-02

This Acquisition Alert notice is being transmitted to all NOAA Heads of Contracting Offices (HCOs). If you have any questions or comments about the Alert, please contact Helen Hurcombe by e-mail or by telephone on (301) 713-0836.

PLEASE SHARE THIS MESSAGE WITH YOUR ACQUISITION STAFF:

1. The Federal Acquisition Regulatory Council (FAR Council) has issued a final rule clarifying what constitutes a “satisfactory record of integrity and business ethics” in making contractor responsibility determinations under FAR Part 9 and revising several cost principles under FAR Part 31 related to labor relations and legal and other provisions. This final rule is effective January 19, 2001.

The changes to FAR Part 9 include:

- A requirement for coordinating nonresponsibility determinations based upon integrity and business ethics with legal counsel.
- Clarifying that integrity and business ethics includes satisfactory compliance with law including tax laws, labor and employment laws, environmental laws, antitrust laws and consumer protection laws.
- In making responsibility determinations, Contracting Officers are to consider (in descending order of importance):
 - Convictions of or civil judgments for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statement, tax evasion, or receiving stolen property.
 - Indictments for the above offenses.
 - Federal or state felony convictions, adverse Federal court judgments in civil cases brought by the United States, adverse decisions by a Federal administrative law judge, board, or commission indicating violations of law, and federal or state felony indictments related to tax, labor and employment, environmental, antitrust, or consumer protection laws .

- Contracting Officers may also consider other relevant information such as civil or administrative complaints or similar actions filed by or on behalf of a federal agency, board or commission, if such action reflects an adjudicated determination of the agency.

This change also requires that bidders or offerors be promptly notified of their exclusion for consideration for award whenever a nonresponsibility determination has been made.

Clauses 52.209-5 and 52.212-3 have been updated to reflect the new offeror certification requirements.

2. Section 1010 of the fiscal year 2001 defense authorization act contains a statutory requirement requiring that all cost-reimbursement contracts for services awarded on or after December 15, 2000, will require federal agencies to pay an interest penalty whenever they make an interim payment more than 30 days after receiving a proper invoice from the contractor. The Office of Management and Budget has issued an interim rule to implement this statutory requirement.
3. The December 21, 2000, issue of the Federal Register included the Final Rule on Section 508, Electronic and Information Technology Accessibility Standards, as published by the Access Board. The enforcement provisions of Section 508 take effect six months from The date the Board published its final standards. Thus, the enforcement provisions of Section 508 will be effective as of June 21, 2001.

NOAA is planning a half day session on Section 508 on either February 14 or 15, 2001. The agenda will include opening remarks by the NOAA CIO, a Keynote address (Doug Wakefield, an accessibility specialist with the Access Board has been invited), a panel consisting of NOAA employees to discuss meeting the challenge of the Section 508 Technical Standards, a question and answer session and closing remarks. The panel will be discussing the technical standards that provide criteria specific to various types of technologies:

- Software applications and operating systems
- Web-based Intranet and Internet information and applications
- Telecommunications products
- Video or multimedia products
- Self-contained, closed products
- Desktop and portable computers

A copy of the final standards are attached.